

**[MORGAN & MORGAN]**  
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March 6, 2023

**VIA ECF**

Hon. Richard Mark Gergel  
U.S. District Court for the District of South Carolina  
J. Waites Waring Judicial Center  
83 Meeting Street  
Charleston, South Carolina 29401

Re: *In re AFFF Products Liability Litigation*, MDL No. 2:18-mn-2873-RMG

Dear Judge Gergel:

I am counsel for Plaintiff City of Stuart (“Stuart”) and was on the Speaker’s line during the March 3, 2023, Case Management Conference but, unfortunately, did not get an opportunity to speak. I appreciate that the issue was addressed expeditiously, but I intended to correct the claim made by Defendants in the Joint Status Report that it was in Plaintiff’s opposition to Defendants’ motion for summary judgment that the City of Stuart “announced for the first time that it did not, in fact, intend to move to the Floridan Aquifer.”<sup>1</sup> I respectfully request the opportunity to do so briefly now.

To this end, I wish to point out that during the July 19, 2022, deposition of Plaintiff’s expert, Mr. Ronald Kevin Berryhill, he testified at length about conversations he had with City of Stuart employees and the City’s stated intention to follow his recommendation that the City remain on the Surficial Aquifer by expanding the treatment plant to add two additional vessels.<sup>2</sup>

In response to questions from counsel for 3M, Mr. Berryhill testified as follows:

Q: It's your opinion that the ion exchange system should be expanded to 6 million gallons a day capacity, correct?

A. Correct.

Q. Okay. What are you relying on for that opinion?

A. My independent analysis of the ion exchange process parameters, the empty bed contact time, the hydraulic loading rate. It's not adequate for 6 million gallon per day capacity.

Q. The ion exchange system is not adequate for 4 million gallons per day capacity?

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<sup>1</sup> See Joint Status Report for March 3, 2023, Case Management Conference, at 40.

<sup>2</sup> See July 19, 2022, Deposition of Kevin Berryhill (“Berryhill Dep.”), at 493:7-19 [ECF No. 2806-6].

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A. I said 6.

Q. You've spoken with City employees and Mr. Miller about expanding the ion exchange system, correct?

A. *Correct.*

Q. Do you have any indication of whether they're going to move forward with that suggestion?

A. *I think they have every intent to move forward with that suggestion.*

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Q. Have you seen any documents discussing that?

A. There was extensive discussion in the basis of design report prepared by Mr. Miller and other documents that the plant can only handle 4 MGD in its current configuration and would need to be expanded. At the time, they were viewing it as an interim solution rather than a long-term solution.

Q. So is the City viewing the ion exchange system as a long-term solution now?

A. *For the Surficial Aquifer, yes.*<sup>3</sup>

In light of the foregoing testimony, any suggestion that Defendants learned for the first time that the City of Stuart intended to remain on the Surficial Aquifer as a result of Plaintiff's opposition to Defendants' summary judgment motion is not accurate.

To that end, and to the extent there has been even the slightest insinuation by defense counsel that the City of Stuart's policies regarding the cleanup of the widespread PFAS contamination in its drinking water is being guided by litigation driven factors, (to wit; in order to oppose a summary judgment motion) the City has asked me to make it unequivocally clear to the Court that they take great exception to any such insinuation. Decisions such as these, which directly impact the health and welfare of the City's citizens are treated with the utmost of seriousness and are based *purely* on what is in the best interests of those citizens, including every man, woman and child, and not on any lawsuit.

In any event, as discussed by Plaintiffs' Co-Lead counsel, Michael London, during Friday's case management conference, the City of Stuart is prepared to produce a witness for a deposition on this narrow topic.

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<sup>3</sup> Berryhill Dep. at 561:7-562:2 (emphasis added).

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On behalf of the City of Stuart, I wish to thank the Court for the opportunity to correct the record in this regard and for its time and courtesies.

Respectfully submitted,

*/s/ Frank M. Petosa*

Frank M. Petosa

cc: All Counsel of Record (by ECF)  
Cary Kotcher, Esq. (via email)(Cary\_Kotcher@scd.uscourts.gov)